

2011 DRAFTING REQUEST

Bill

Received: **09/13/2010**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Brian**

May Contact:

Drafter: **phurley**

Subject: **Courts - torts**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Gender-based violence

Instructions:

09 AB 480

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 09/13/2010	jdye 09/14/2010					
/P1	phurley 10/04/2010	jdye 10/04/2010	rschluet 09/14/2010		sbasford 09/14/2010		
/1			mduchek 10/04/2010		cdurst 10/04/2010	cdurst 10/04/2010	S&L Crime
/2	phurley 04/29/2011	jdye 05/03/2011	phenry 05/04/2011		lparisi 05/04/2011	lparisi 05/04/2011	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

At intro

<END>

2011 DRAFTING REQUEST

Bill

Received: **09/13/2010**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Brian**

May Contact:

Drafter: **phurley**

Subject: **Courts - torts**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Gender-based violence

Instructions:

09 AB 480

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 09/13/2010	jdyer 09/14/2010		_____			
/P1	phurley 10/04/2010	jdyer 10/04/2010	rschluet 09/14/2010	_____	sbasford 09/14/2010		
/1			mduchek 10/04/2010	_____	cduerst 10/04/2010	cduerst 10/04/2010	

Handwritten notes: 1/2 5/3 JLD, JF, [Signature], PH

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: **09/13/2010**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Brian**

May Contact:

Drafter: **phurley**

Subject: **Courts - torts**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Gender-based violence

Instructions:

09 AB 480

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 09/13/2010	jdye 09/14/2010		_____			
/P1	phurley 10/04/2010	jdye 10/04/2010	rschluet 09/14/2010	_____	sbasford 09/14/2010		
/1			mduchek 10/04/2010	_____	cduerst 10/04/2010		

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: 09/13/2010

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: Brian

May Contact:

Drafter: phurley

Subject: Courts - torts

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Berceau@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Gender-based violence

Instructions:

09 AB 480

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 09/13/2010	jdye 09/14/2010					
/P1		10/4 jld	rschluet 09/14/2010		sbasford 09/14/2010		

FE Sent For:

<END>

no changes
except from
1A to 11.
Pls Jacket.

2011 DRAFTING REQUEST

Bill

Received: 09/13/2010

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: Brian

May Contact:

Drafter: phurley

Subject: Courts - torts

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Berceau@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Gender-based violence

Instructions:

09 AB 480

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?

phurley

PI 9/14/10
9/14/10

FE Sent For:

<END>

PJH
?

Bill Request Form

Legislative Reference Bureau
One East Main Street, Suite 200
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 9/13/11

Legislator, agency, or other person requesting this draft Rep. Bertram

Person submitting request (name and phone number) Juan - 6-3784

Persons to contact for questions about this draft (names and phone numbers) Juan

Describe the problem, including any helpful examples. How do you want to solve the problem?

*please re-draft AB 480
gender violence Act
(pls. update effective date,
etc.)*

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2005 LRB-2345/1 or 2003 AB-67). *to be to Brian include any amendments?*

*AB 480 - 094747 contains desired
amend.*

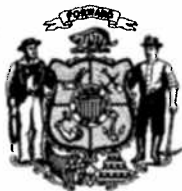
Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES ☒ NO

If yes: Anyone who asks? YES NO
Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES ☒ NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person? YES ☒ NO



State of Wisconsin
2009 - 2010 LEGISLATURE

0079/p1
LRB-17441

PJH:jld:rs

↑
KEEP

2011 BILL

2009 BILL

LPS-
PWF
please

9-13-10

X

Gen

- 1 AN ACT *to amend* 814.04 (intro.); and *to create* 893.583 and 895.437 of the
2 statutes; **relating to:** creating a civil cause of action for acts of violence
3 motivated by gender.✓

Analysis by the Legislative Reference Bureau

This bill creates a✓ civil cause of action for a person who suffers✓ physical, emotional, or economic harm as a result of a gender-based act.✓ Under the bill, a gender-based act is a physical act of violence that is committed, at least in part, on the basis of the victim's gender or sexual intercourse or contact that the actor commits under coercive conditions.✓ Under the bill, if the✓ actor has previously committed either of these acts against the victim,✓ a threat to commit either of those acts is also a gender-based act.✓

Under the bill, a victim must commence a✓ civil action against the actor within seven✓ years after the gender-based act occurs or, if the victim is under the age of 18,✓ within seven✓ years after the victim's 18th✓ birthday. A victim who prevails in a civil action for a gender-based act✓ may recover damages for✓ emotional distress, punitive damages, and investigation or litigation costs, including attorney fees.✓ The bill specifies that a cause of action exists only against the person who committed the gender-based act.✓

individual

*

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

1 **SECTION 1.** 814.04 (intro.) of the statutes ~~as affected by 2009 Wisconsin Act 20,~~

2 is amended to read:

3 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
4 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)
5 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.437 (4), 895.443 (3),
6 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
7 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

8 **SECTION 2.** 893.583 of the statutes is created to read:

9 **893.583 Gender-based harm.** Notwithstanding ss. 893.16, 893.54, and
10 893.57, an action under s. 895.437 shall be commenced within 7 years after the cause
11 of action accrues or, if the victim is under the age of 18 at the time the cause of action
12 accrues, within 7 years of the victim's 18th birthday, or be barred.

13 **SECTION 3.** 895.437 of the statutes is created to read:

14 **895.437 Gender-based harm; action for.** (1) In this section:

15 (a) "Gender-based act" means any of the following:

16 1. A physical act of violence that satisfies the elements of s. 940.19 (1) that an
17 individual commits against the victim, at least in part, on the basis of the victim's
18 gender.

19 2. Sexual contact as defined in s. 940.225 (5) (b) or sexual intercourse as defined
20 in s. 940.225 (5) (c) that an individual commits under coercive conditions or without
21 consent as defined in s. 940.225 (4).

22 3. If an individual has previously committed a physical act of violence that
23 satisfies the elements of s. 940.19 (1) against the victim or an act described in subd.
24 2., a threat to commit an act described in subd. 1. or 2.

BILL

1 (b) "Victim" means a person against whom a gender-based act has been
2 committed.

3 (2) A victim has a cause of action for injunctive relief and for damages, as
4 provided in sub. (4), against the individual who commits a gender-based act that
5 results in a physical injury, emotional distress, or damage to or loss of property to the
6 victim.

7 (3) The burden of proof in a civil action under sub. (2) rests with the victim to
8 prove that the defendant committed a gender-based act and that the victim suffered
9 harm as a result of the act by a preponderance of the credible evidence.

10 (4) If the plaintiff prevails in a civil action under sub. (2), he or she may recover
11 special and general damages, including damages for emotional distress; punitive
12 damages; and costs, including all reasonable attorney fees and other costs of the
13 investigation and litigation that were reasonably incurred.

14 (5) A person may bring a civil action under sub. (2) regardless of whether there
15 has been a criminal action related to the gender-based act and regardless of the
16 outcome of any such criminal action. If there is a final judgment or decree rendered
17 in favor of the state in any criminal proceeding against the defendant, a defendant
18 may not deny the essential allegations of the criminal offense in any action under this
19 section.

20 (6) A gender-based act under this section shall be deemed for all purposes to
21 be an intentional act.

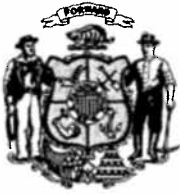
22 (7) This section does not limit the right of a person to recover from any parent
23 or parents under s. 895.035.

BILL

SECTION 3

1 (8) This section does not create a cause of action against any person except the
2 individual who commits a gender-based act. ✓

3 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0079/P1

PJH:jld:rs

mm

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

x Regen

1 AN ACT *to amend* 814.04 (intro.); and *to create* 893.583 and 895.437 of the
2 statutes; **relating to:** creating a civil cause of action for acts of violence
3 motivated by gender.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action for a person who suffers physical, emotional, or economic harm as a result of a gender-based act. Under the bill, a gender-based act is a physical act of violence that is committed, at least in part, on the basis of the victim's gender or sexual intercourse or contact that the actor commits under coercive conditions. Under the bill, if the actor has previously committed either of these acts against the victim, a threat to commit either of those acts is also a gender-based act.

Under the bill, a victim must commence a civil action against the actor within seven years after the gender-based act occurs or, if the victim is under the age of 18, within seven years after the victim's 18th birthday. A victim who prevails in a civil action for a gender-based act may recover damages for emotional distress, punitive damages, and investigation or litigation costs, including attorney fees. The bill specifies that a cause of action exists only against the individual who committed the gender-based act.

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 814.04 (intro.) of the statutes is amended to read:

2 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)

3 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)
4 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.437 (4), 895.443 (3),
5 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
6 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

7 **SECTION 2.** 893.583 of the statutes is created to read:

8 **893.583 Gender-based harm.** Notwithstanding ss. 893.16, 893.54, and
9 893.57, an action under s. 895.437 shall be commenced within 7 years after the cause
10 of action accrues or, if the victim is under the age of 18 at the time the cause of action
11 accrues, within 7 years of the victim's 18th birthday, or be barred.

12 **SECTION 3.** 895.437 of the statutes is created to read:

13 **895.437 Gender-based harm; action for.** (1) In this section:

14 (a) "Gender-based act" means any of the following:

15 1. A physical act of violence that satisfies the elements of s. 940.19 (1) that an
16 individual commits against the victim, at least in part, on the basis of the victim's
17 gender.

18 2. Sexual contact as defined in s. 940.225 (5) (b) or sexual intercourse as defined
19 in s. 940.225 (5) (c) that an individual commits under coercive conditions or without
20 consent as defined in s. 940.225 (4).

21 3. If an individual has previously committed a physical act of violence that
22 satisfies the elements of s. 940.19 (1) against the victim or an act described in subd.
23 2., a threat to commit an act described in subd. 1. or 2.

24 (b) "Victim" means a person against whom a gender-based act has been
25 committed.

(2) A victim has a cause of action for injunctive relief and for damages, as provided in sub. (4), against the individual who commits a gender-based act that results in a physical injury, emotional distress, or damage to or loss of property to the victim.

(3) The burden of proof in a civil action under sub. (2) rests with the victim to prove that the defendant committed a gender-based act and that the victim suffered harm as a result of the act by a preponderance of the credible evidence.

(4) If the plaintiff prevails in a civil action under sub. (2), he or she may recover special and general damages, including damages for emotional distress; punitive damages; and costs, including all reasonable attorney fees and other costs of the investigation and litigation that were reasonably incurred.

(5) A person may bring a civil action under sub. (2) regardless of whether there has been a criminal action related to the gender-based act and regardless of the outcome of any such criminal action. If there is a final judgment or decree rendered in favor of the state in any criminal proceeding against the defendant, a defendant may not deny the essential allegations of the criminal offense in any action under this section.

(6) A gender-based act under this section shall be deemed for all purposes to be an intentional act.

(7) This section does not limit the right of a person to recover from any parent or parents under s. 895.035.

(8) This section does not create a cause of action against any person except the individual who commits a gender-based act.

(END)

Hurley, Peggy

From: Seligman, Noah
Sent: Wednesday, April 20, 2011 5:01 PM
To: Hurley, Peggy
Subject: New Draft of LRB 0079/P1

Attachments: 2011 LRB 0079-1 Gender Violence Act.pdf



2011 LRB 0079-1
Gender Violenc...

Attached is a draft of LRB 0079/1. I would like it modified per our conversation yesterday to add "gender" under 939.645 of the state statutes related to different hate crimes.

Please let me know if you have questions.

Thanks.

Noah Seligman
Legislative Assistant
Office of State Rep. Terese Berceau
608-266-3784

939.632 CRIMES — GENERALLY

1. On the premises of a school.
2. Within 1,000 feet from the premises of a school.
3. On a school bus or public transportation transporting students to and from a public or private school or to and from a tribal school, as defined in s. 115.001 (15m).

3m. At school bus stops where students are waiting for a school bus or are being dropped off by a school bus.

(e) "Violent crime" means any of the following:

1. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.19 (2), (4) or (5), 940.21, 940.225 (1), (2) or (3), 940.235, 940.305, 940.31, 941.20, 941.21, 943.02, 943.06, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.051, 948.055, 948.07, 948.08, 948.085, or 948.30 (2) or under s. 940.302 (2) if s. 940.302 (2) (a) l. b. applies.

2. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

3. Any misdemeanor under s. 940.19 (1), 940.225 (3m), 940.32 (2), 940.42, 940.44, 941.20 (1), 941.23, 941.235, 941.24 or 941.38 (3).

(2) If a person commits a violent crime in a school zone, the maximum term of imprisonment is increased as follows:

(a) If the violent crime is a felony, the maximum term of imprisonment is increased by 5 years.

(b) If the violent crime is a misdemeanor, the maximum term of imprisonment is increased by 3 months and the place of imprisonment is the county jail.

(3) (a) In addition to any other penalties that may apply to the crime under sub. (2), the court may require the person to complete 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order. Any organization or agency acting in good faith to which a defendant is assigned under an order under this paragraph has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.

(b) The court shall not impose the requirement under par. (a) if the court determines that the person would pose a threat to public safety while completing the requirement.

(4) This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (2).

History: 1995 a. 22; 2001 a. 109; 2005 a. 277; 2007 a. 116, 127; 2009 a. 180, 302. The violent crime in a school zone penalty enhancer is not unconstitutional as applied to the defendant. The legislature seeks to deter violent crime near schools in an effort to create a safety zone around schools. The 1,000-foot perimeter is a reasonable distance to try to accomplish this legislative goal. *State v. Quintana*, 2007 WI App 29, 299 Wis. 2d 234, 729 N.W.2d 776, 06-0499.

939.645. Penalty crimes committed against certain people or property. (1). If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):

- (a) Commits a crime under chs. 939 to 948.
- (b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par. (a) in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception was correct.

(2) (a) If the crime committed under sub. (1) is ordinarily a misdemeanor other than a Class A misdemeanor, the revised maximum fine is \$10,000 and the revised maximum term of imprisonment is one year in the county jail.

(b) If the crime committed under sub. (1) is ordinarily a Class A misdemeanor, the penalty increase under this section changes the status of the crime to a felony and the revised maximum fine

is \$10,000 and the revised maximum term of imprisonment is 2 years.

(c) If the crime committed under sub. (1) is a felony, the maximum fine prescribed by law for the crime may be increased by not more than \$5,000 and the maximum term of imprisonment prescribed by law for the crime may be increased by not more than 5 years.

(3) This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (1).

(4) This section does not apply to any crime if proof of race, religion, color, disability, sexual orientation, national origin or ancestry or proof of any person's perception or belief regarding another's race, religion, color, disability, sexual orientation, national origin or ancestry is required for a conviction for that crime.

History: 1987 a. 348; 1991 a. 291; 2001 a. 109.

When two penalty enhancers are applicable to the same crime, the length of the second penalty enhancer is based on the maximum term for the base crime as extended by the first penalty enhancer. *State v. Quiroz*, 2002 WI App 52, 251 Wis. 2d 245, 641 N.W.2d 715, 01-1549.

The "hate crimes" law, s. 939.645, does not unconstitutionally infringe upon free speech. *State v. Mitchell*, 508 U.S. 476, 124 L. Ed. 2d 436 (1993); 178 Wis. 2d 597, 504 N.W.2d 610 (1993).

Hate Crimes: New Limits on the Scope of the 1st Amendment. *Resler*. 77 MLR 415 (1993).

Put to the Proof: Evidentiary Considerations in Wisconsin Hate Crime Prosecutions. *Read*. 89 MLR 453 (2005).

Talking about Hate Speech: A Rhetorical Analysis of American and Canadian Regulation of Hate Speech. *Moran*. 1994 WLR 1425.

Hate Crimes. *Kassel*. Wis. Law. Oct. 1992.

SUBCHAPTER V

RIGHTS OF THE PROSECUTION

939.65 Prosecution under more than one section permitted. Except as provided in s. 948.025 (3), if an act forms the basis for a crime punishable under more than one statutory provision, prosecution may proceed under any or all such provisions.

History: 1993 a. 227.

Due process does not require that a person know with certainty which crime, among several, the person is committing, at least until the prosecution exercises its charging discretion. *Harris v. State*, 78 Wis. 2d 357, 254 N.W.2d 291 (1977).

939.66 Conviction of included crime permitted. Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included crime, but not both. An included crime may be any of the following:

(1) A crime which does not require proof of any fact in addition to those which must be proved for the crime charged.

(2) A crime which is a less serious type of criminal homicide than the one charged.

(2m) A crime which is a less serious or equally serious type of battery than the one charged.

(2p) A crime which is a less serious or equally serious type of violation under s. 948.02 than the one charged.

(2r) A crime which is a less serious type of violation under s. 943.23 than the one charged.

(3) A crime which is the same as the crime charged except that it requires recklessness or negligence while the crime charged requires a criminal intent.

(4) An attempt in violation of s. 939.32 to commit the crime charged.

(4m) A crime of failure to timely pay child support under s. 948.22 (3) when the crime charged is failure to pay child support for more than 120 days under s. 948.22 (2).

(5) The crime of attempted battery when the crime charged is sexual assault, sexual assault of a child, robbery, mayhem or aggravated battery or an attempt to commit any of them.

(6) A crime specified in s. 940.285 (2) (b) 4. or 5. when the crime charged is specified in s. 940.19 (2) to (6), 940.225 (1), (2) or (3) or 940.30.

(6c) A crime that is a less serious type of violation under s. 940.285 than the one charged.

(6e) A crime that is a less serious type of violation under s. 940.295 than the one charged.

(7) The crime specified in s. 940.11 (2) when the crime charged is specified in s. 940.11 (1).

History: 1985 a. 29, 144, 306, 332; 1987 a. 332 s. 64; 1987 a. 349, 403; 1989 a. 31 s. 209b; 1989 a. 250; 1991 a. 205; 1993 a. 441, 445, 491; 2005 a. 430.

To submit a lesser included offense, there must be some reasonable ground in the evidence for conviction on the lesser and acquittal on the greater. A lesser offense is permissible when the evidence requires the jury to find a disputed factual element in the charged offense that is not required for the lesser and the jury might find the disputed fact either way. *State v. Melvin*, 49 Wis. 2d 246, 181 N.W.2d 490 (1970).

Attempted battery can only be an included crime as to the specific offenses listed. *State v. Melvin*, 49 Wis. 2d 246, 181 N.W.2d 490 (1970).

A charge of possession of a pistol by a minor is not an included crime in a charge of attempted first-degree murder because it includes the element of minority that the greater crime does not. *State v. Melvin*, 49 Wis. 2d 246, 181 N.W.2d 490 (1970).

Disorderly conduct is not a lesser included offense of criminal damage to property. *State v. Chacon*, 50 Wis. 2d 73, 183 N.W.2d 84 (1971).

While attempted aggravated battery is not an included crime of aggravated battery under sub. (1), it is under sub. (4). The reduced charge does not put the defendant in double jeopardy. *Dunn v. State*, 55 Wis. 2d 192, 197 N.W.2d 749 (1972).

Under sub. (1), the emphasis is on the proof, not the pleading, and the "stricken word test" stated in *Eastway v. State*, 189 Wis. 56, is not incorporated in the statute. *Martin v. State*, 57 Wis. 2d 499, 204 N.W.2d 499 (1973).

Section 947.015, bomb scares, is not an included crime in s. 941.30, recklessly endangering safety. *State v. Van Ark*, 62 Wis. 2d 155, 215 N.W.2d 41 (1974).

When the evidence overwhelmingly showed that a shooting was intentional, failure to include negligent homicide under ss. 940.06 and 940.08 as a lesser included offenses was not error. *Hayzes v. State*, 64 Wis. 2d 189, 218 N.W.2d 717 (1974).

In order to justify the submission of an instruction on a lesser degree of homicide than that with which the defendant is charged, there must be a reasonable basis in the evidence for acquittal on the greater charge and for conviction on the lesser charge. *Harris v. State*, 68 Wis. 2d 436, 228 N.W.2d 645 (1975).

For one crime to be included in another, it must be utterly impossible to commit the greater crime without committing the lesser. *Randolph v. State*, 83 Wis. 2d 630, 266 N.W.2d 334 (1978).

The test under sub. (1) concerns legal, statutorily defined elements of the crime, not peculiar facts of case. *State v. Verhasselt*, 83 Wis. 2d 647, 266 N.W.2d 342 (1978).

The trial court erred in denying the defendant's request for the submission of a verdict of endangering safety by conduct regardless of life as a lesser included offense of attempted murder. *Hawthorne v. State*, 99 Wis. 2d 673, 299 N.W.2d 866 (1981).

Without clear legislative intent to the contrary, multiple punishment may not be imposed for felony-murder and the underlying felony. *State v. Gordon*, 111 Wis. 2d 133, 330 N.W.2d 564 (1983).

When a defendant charged with 2nd-degree murder denied firing the fatal shot, a manslaughter instruction was properly denied. *State v. Sarabia*, 118 Wis. 2d 655, 348 N.W.2d 527 (1984).

Under the "elements only" test, offenses that require proof of nonconsent are not lesser included offenses of offenses for which proof of nonconsent is not required. *State v. Richards*, 123 Wis. 2d 1, 365 N.W.2d 7 (1985).

When police confiscated a large quantity of drugs from an empty home and the next day searched the defendant upon his return home, confiscating a small quantity of the same drugs, the defendant's conviction for a lesser-included offense of possession and a greater offense of possession with intent to deliver did not violate double jeopardy. *State v. Stevens*, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

Reckless use of weapons under s. 941.20 (1) (a), 1983 stats., was not a lesser included offense of crime of endangering safety by conduct regardless of life while armed under ss. 939.63 (1) (a) 3. and 941.30, 1983 stats. *State v. Carrington*, 134 Wis. 2d 260, 397 N.W.2d 484 (1986).

The court must instruct the jury on a properly requested lesser offense even though the statute of limitations bars the court from entering a conviction on the lesser offense. *State v. Muentner*, 138 Wis. 2d 374, 406 N.W.2d 415 (1987).

The court of appeals may not direct the circuit court to enter a judgment of conviction for a lesser included offense when a jury verdict of guilty on a greater offense is reversed for insufficiency of evidence and the jury was not instructed on the lesser included offense. *State v. Myers*, 158 Wis. 2d 356, 461 N.W.2d 777 (1990).

Convictions for both first-degree murder and burglary/battery are permissible. *State v. Kuntz*, 160 Wis. 2d 722, 467 N.W.2d 531 (1991).

Evidence at trial may suggest to the state that an instruction on a lesser included offense is appropriate; it is unreasonable for a defendant to assume at the outset of trial that evidence may not affect the state's prosecuting position. *State v. Fleming*, 181 Wis. 2d 546, 510 N.W.2d 837 (Ct. App. 1993).

This section does not bar multiple convictions when homicides are "equally serious." Two Class C felonies with the same maximum penalty were equally serious although one carried additional sanctions of driver license revocation and an additional penalty assessment that the other did not. *State v. Lechner*, 217 Wis. 2d 392, 576 N.W.2d 912 (1998), 96-2830.

Misdemeanor battery is an included crime of felony battery, but they are not the same offense. Acquittal on felony battery charges does not prevent subsequent prosecution for misdemeanor battery. *State v. Vassos*, 218 Wis. 2d 330, 579 N.W.2d 35 (1998), 97-0938.

There is no rule that when a more specific crime could have been charged, the defendant loses the right to a lesser-included instruction on a more general offense. That retail theft, which was not a lesser-included offense of armed robbery, could have been charged did not prevent the giving of an instruction on theft as a lesser included offense of armed robbery. *State v. Jones*, 228 Wis. 2d 593, 598 N.W.2d 259 (Ct. App. 1999), 98-1681.

A lesser included offense must be both lesser and included. An offense with a heavier penalty cannot be regarded as a lesser offense than one with a lighter penalty. *State v. Smits*, 2001 WI App 45, 241 Wis. 2d 374, 626 N.W.2d 42, 00-1158.

When a jury returned a verdict finding the defendant guilty of both a greater and a lesser included offense, although it had been instructed that it could only find one or the other, it was not error for the court to enter judgment on the greater offense after polling the jury to confirm the result. *State v. Hughes*, 2001 WI App 239, 248 Wis. 2d 133, 635 N.W.2d 661, 00-3176. See also *State v. Cox*, 2007 WI App 38, 300 Wis. 2d 236, 730 N.W.2d 452, 06-0419.

Separate prosecutions for a carjacking that occurred on one day and operating the same car without the owner's consent on the next did not violate sub. (2r) or the constitutional protection against double jeopardy. *State v. McKinnie*, 2002 WI App 82, 252 Wis. 2d 172, 642 N.W.2d 617, 01-2764.

Sub. (2m) only applies to battery under s. 940.19 and not to battery by a prisoner under s. 940.20. Charging both was not multiplicitous and not a double jeopardy violation. *State v. Davison*, 2003 WI 89, 263 Wis. 2d 145, 666 N.W.2d 1, 01-0826.

Section 948.40 (1) and (4) (a), contributing to the delinquency of a child with death as a consequence, is not a "type of criminal homicide" included under sub. (2). It provides a more serious punishment when "death is a consequence" of its violation. In contrast, the homicide statutes in ch. 940 target those who "cause the death" of another. *State v. Patterson*, 2010 WI 130, ___ Wis. 2d ___, ___ N.W.2d ___, 08-1968.

Multiple Punishment in Wisconsin and the *Wolske* Decision: Is It Desirable to Permit Two Homicide Convictions for Causing a Single Death? 1990 WLR 553.

NOTE: See also notes to Art. I, sec. 8, Double Jeopardy.

SUBCHAPTER VI

RIGHTS OF THE ACCUSED

939.70 Presumption of Innocence and burden of proof. No provision of chs. 939 to 951 shall be construed as changing the existing law with respect to presumption of innocence or burden of proof.

History: 1979 c. 89; 1987 a. 332 s. 64.

939.71 Limitation on the number of convictions. If an act forms the basis for a crime punishable under more than one statutory provision of this state or under a statutory provision of this state and the laws of another jurisdiction, a conviction or acquittal on the merits under one provision bars a subsequent prosecution under the other provision unless each provision requires proof of a fact for conviction which the other does not require.

Misdemeanor battery is an included crime of felony battery, but they are not the same offense. Acquittal on felony battery charges does not prevent subsequent prosecution for misdemeanor battery. *State v. Vassos*, 218 Wis. 2d 330, 579 N.W.2d 35 (1998), 97-0938.

This section does not bar a subsequent prosecution for an offense arising from the same acts that could not have been charged at the time of the first prosecution and thus did not bar prosecuting a defendant for 1st-degree intentional homicide for the same act which led to battery convictions when the victim died after having been in a coma for 4 years. *State v. McKee*, 2002 WI App 148, 256 Wis. 2d 547, 648 N.W.2d 34, 01-1966.

Under this section, a subsequent prosecution is not prohibited if each provision requires proof of a fact for conviction that the other does not require, even if the same conduct was involved in the two prosecutions. In contrast, s. 961.45 provides that if a violation of ch. 961 is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. The difference in the 2 statutes does not violate equal protection. *State v. Swinson*, 2003 WI App 45, 261 Wis. 2d 633, 660 N.W.2d 12, 02-0395.

939.72 No conviction of both inchoate and completed crime. A person shall not be convicted under both:

- (1) Section 939.30 for solicitation and s. 939.05 as a party to a crime which is the objective of the solicitation; or
- (2) Section 939.31 for conspiracy and s. 939.05 as a party to a crime which is the objective of the conspiracy; or
- (3) Section 939.32 for attempt and the section defining the completed crime.

History: 1991 a. 153; 2001 a. 109.

Sub. (3) does not bar convicting the defendant who shot at one person but killed another of both murder and attempted murder. *Austin v. State*, 86 Wis. 2d 213, 271 N.W.2d 668 (1978).

Sub. (3) does not bar convictions for possession of burglarious tools and burglary arising out of a single transaction. *Dumas v. State*, 90 Wis. 2d 518, 280 N.W.2d 310 (Ct. App. 1979).

939.72 CRIMES — GENERALLY

This section refers to convictions, not charges. The state may properly charge a defendant with both being a party to an attempt to commit a crime and conspiracy to commit the crime. *State v. Moffett*, 2000 WI 130, 239 Wis. 2d 629, 619 N.W.2d 918, 99–1768.

939.73 Criminal penalty permitted only on conviction. A penalty for the commission of a crime may be imposed only after the actor has been duly convicted in a court of competent jurisdiction.

939.74 Time limitations on prosecutions. (1) Except as provided in subs. (2) and (2d) and s. 946.88 (1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

(2) Notwithstanding that the time limitation under sub. (1) has expired:

(a) A prosecution under s. 940.01, 940.02, 940.03, 940.05, 948.02 (1), or 948.025 (1) (a), (b), (c), or (d) may be commenced at any time.

(am) A prosecution under s. 940.06 may be commenced within 15 years after the commission of the violation.

(b) A prosecution for theft against one who obtained possession of the property lawfully and subsequently misappropriated it may be commenced within one year after discovery of the loss by the aggrieved party, but in no case shall this provision extend the time limitation in sub. (1) by more than 5 years.

(c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03 (2) (a), 948.05, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095 shall be commenced before the victim reaches the age of 45 years or be barred, except as provided in sub. (2d).

(cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4), 948.04 or 948.07 (5) or (6) shall be commenced before the victim reaches the age of 26 years or be barred, except as provided in sub. (2d).

(d) A prosecution for a violation of s. 948.051 shall be commenced before the victim reaches the age of 24 or be barred, except as provided in sub. (2d).

(2d) (a) In this subsection, “deoxyribonucleic acid profile” means an individual’s patterned chemical structure of genetic information identified by analyzing biological material that contains the individual’s deoxyribonucleic acid.

(am) For purposes of this subsection, crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

(b) If, before the time limitation under sub. (1) for commencing prosecution of a violation of s. 940.225 (1) expires, the state collects biological material that is evidence of the identity of the person who committed the violation, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the state may commence prosecution of the person who is the source of the biological material for the violation of s. 940.225 (1) at any time after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person or within the applicable time under sub. (1), whichever is later, and may commence prosecution of the person who is the source of the biological material for a crime that is related to the violation under s. 940.225 (1) within 12 months after comparison of the deoxyribonucleic acid profile relating to the violation results in a probable identification of the person or within the applicable time under sub. (1) or (2), whichever is latest.

(c) If, before the applicable time limitation under sub. (1) or (2) (am), (c), (cm), or (d) for commencing prosecution of a felony under ch. 940 or 948, other than a felony under s. 940.225 (1) or

a felony specified in sub. (2) (a), expires, the state collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the state may commence prosecution of the person who is the source of the biological material for the felony or a crime that is related to the felony or both within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the person or within the applicable time under sub. (1) or (2), whichever is latest.

(e) If, within 6 years after commission of a felony specified under sub. (2) (a), the state collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the state may commence prosecution of the person who is the source of the biological material for a crime that is related to the felony within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the person or within the applicable time under sub. (1) or (2), whichever is latest.

(3) In computing the time limited by this section, the time during which the actor was not publicly a resident within this state or during which a prosecution against the actor for the same act was pending shall not be included. A prosecution is pending when a warrant or a summons has been issued, an indictment has been found, or an information has been filed.

(4) In computing the time limited by this section, the time during which an alleged victim under s. 940.22 (2) is unable to seek the issuance of a complaint under s. 968.02 due to the effects of the sexual contact or due to any threats, instructions or statements from the therapist shall not be included.

History: 1981 c. 280; 1985 a. 275; 1987 a. 332, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237; 2001 a. 16, 109; 2003 a. 196, 279, 326; 2005 a. 60, 276, 277; 2007 a. 80, 97, 116; 2009 a. 203.

While courts have no duty to secure informed waivers of possible statutory defenses when accepting a guilty plea, under the unique facts of the case, the defendant was entitled to withdraw a guilty plea to a charge barred by the statute of limitations. *State v. Pohlhammer*, 82 Wis. 2d 1, 260 N.W.2d 678 (1978).

Sub. (3) tolls the running of statutes of limitation during the period in which a defendant is not a state resident and violates neither the privileges and immunities clause nor the equal protection clause of the U.S. constitution. *State v. Sher*, 149 Wis. 2d 1, 437 N.W.2d 878 (1989).

A person is not “publicly a resident within this state” under sub. (3) when living outside the state but retaining state residence for voting and tax purposes. *State v. Whitman*, 160 Wis. 2d 260, 466 N.W.2d 193 (Ct. App. 1990).

An arrest warrant is issued for purposes of sub. (1) when it is signed by a judge with the intent that it be executed and leaves the possession of the judge. That the warrant is never executed is irrelevant. *State v. Mueller*, 201 Wis. 2d 121, 549 N.W.2d 455 (Ct. App. 1996), 93–3227.

The statute of limitations for a continuing offense does not run until the last act is done, which, viewed alone, is a crime. Otherwise, a prosecution for a felony offense must be commenced within 6 years. *State v. Miller*, 2002 WI App 197, 257 Wis. 2d 124, 650 N.W.2d 850, 01–1406.

When the jury found the defendant guilty of having sexual contact with the minor victim during the period outside the statute of limitations, but also found that the victim was unable to seek the issuance of a complaint due to the effects of the sexual contact or due to statements or instructions by the defendant, the statute of limitations was tolled under sub. (4). The jury was required to agree upon a specific act committed within a specific time period but was not required to determine exactly when the agreed-upon offense was committed. When the date of the crime is not a material element of the offense charged, it need not be precisely alleged or determined. *State v. Miller*, 2002 WI App 197, 257 Wis. 2d 124, 650 N.W.2d 850, 01–1406.

When a defendant is already in custody due to his or her incarceration, the filing of a criminal complaint is sufficient to commence a prosecution. *State v. Jennings*, 2003 WI 10, 259 Wis. 2d 523, 657 N.W.2d 393, 01–0507.

The common law “year-and-a-day rule” that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. *State v. Picotte*, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01–3063.

When sub. (2) (c) was created in 1987, it only applied prospectively. Subsequent amendments did not change this conclusion because they did not change the initial applicability of sub. (2) (c). Rather, the language in the subsequent amendments, which stated these amendments apply to offenses not yet barred, was clearly meant to apply to offenses that sub. (2) (c) had not already barred. *State v. MacArthur*, 2008 WI 72, 310 Wis. 2d 550, 750 N.W.2d 910, 06–1379.

The circuit judge decides the tolling issue under sub. (3) in a pretrial proceeding wherein the state must prove that the defendant was not a public resident by a preponderance of the evidence. *State v. MacArthur*, 2008 WI 72, 310 Wis. 2d 550, 750 N.W.2d 910, 06–1379.

17 Updated 09-10 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

CRIMES — GENERALLY 939.75

A plaintiff's allegations of the defendant district attorney's bad faith presented no impediment to application of the general principle prohibiting federal court interference with pending state prosecutions when the only factual assertion in support of the claim was the district attorney's delay in completing the prosecution, and there were no facts alleged that could support any conclusion other than that the district attorney had acted consistently with state statutes and constitution. *Smith v. McCann*, 381 F. Supp. 1027 (1974).

The 36-year tolling of the statute of limitations under sub. (3) was not unconstitutional in this case. It did not violate the Privileges and Immunities, Due Process, or Equal Protection provisions of the U.S. Constitution. Sub. (3) does not burden a fundamental right, and it is rationally related to the legitimate governmental interests of detecting crimes and apprehending criminals. *State v. McGuire*, 2010 WI 91, 328 Wis. 2d 289; 786 N.W.2d 227, 07-2711.

The Perils of Plain Language: Statute of Limitations for Child Sexual Assault Defendants. Flynn. Wis. Law. March 2009.

939.75 Death or harm to an unborn child. (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e), "unborn child" means any individual of the human species from fertilization until birth that is gestating inside a woman.

(2) (a) In this subsection, "induced abortion" means the use of any instrument, medicine, drug or other substance or device in a medical procedure with the intent to terminate the pregnancy of a woman and with an intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the following:

1. An act committed during an induced abortion. This subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16 to an induced abortion.

2. An act that is committed in accordance with the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a physician licensed under ch. 448.

2h. An act by any health care provider, as defined in s. 155.01 (7), that is in accordance with a pregnant woman's power of attorney for health care instrument under ch. 155 or in accordance with a decision of a health care agent who is acting under a pregnant woman's power of attorney for health care instrument under ch. 155.

3. An act by a woman who is pregnant with an unborn child that results in the death of or great bodily harm, substantial bodily harm or bodily harm to that unborn child.

4. The prescription, dispensation or administration by any person lawfully authorized to do so and the use by a woman of any medicine, drug or device that is used as a method of birth control or is intended to prevent pregnancy.

(3) When the existence of an exception under sub. (2) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the exception do not exist in order to sustain a finding of guilt under s. 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) or (1g) (c), (cm), or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24 (2) or 940.25 (1) (c) to (e).

History: 1997 a. 295; 2001 a. 109; 2003 a. 97.

Hurley, Peggy

From: Seligman, Noah
Sent: Friday, April 29, 2011 2:09 PM
To: Hurley, Peggy
Subject: RE: New Draft of LRB 0079/P1

I sent it back already, that's fine.

Noah Seligman
Legislative Assistant
Office of State Rep. Terese Berceau
608-266-3784

From: Hurley, Peggy
Sent: Friday, April 29, 2011 2:08 PM
To: Seligman, Noah
Subject: RE: New Draft of LRB 0079/P1

That makes sense. If you send back the stripes I can have that drafted for you right away. Or, if you prefer, I could enter this as a new request.

Peggy

From: Seligman, Noah
Sent: Friday, April 29, 2011 2:06 PM
To: Hurley, Peggy
Subject: RE: New Draft of LRB 0079/P1

I think essentially we are trying to combine LRB 0079/P1 with 2009 Assembly Bill 481 authored by (former) Representative Parisi.

<http://legis.wisconsin.gov/2009/data/AB481hst.html>

Thanks.

Noah Seligman
Legislative Assistant
Office of State Rep. Terese Berceau
608-266-3784

From: Hurley, Peggy
Sent: Friday, April 29, 2011 1:28 PM
To: Seligman, Noah
Subject: RE: New Draft of LRB 0079/P1

No problem; I hope you feel better.

Peggy

From: Seligman, Noah
Sent: Friday, April 29, 2011 1:20 PM
To: Hurley, Peggy
Subject: RE: New Draft of LRB 0079/P1

I've been out sick, apologies for the delay in response.

I'm sending it back over today for changes.

Thank you.

Noah Seligman
Legislative Assistant
Office of State Rep. Terese Berceau
608-266-3784

From: Hurley, Peggy
Sent: Tuesday, April 26, 2011 8:54 AM
To: Seligman, Noah
Subject: RE: New Draft of LRB 0079/P1

Hi Noah,

This draft has been jacketed for introduction by your office, so I can't redraft until the jacket is returned. Please return the jacket to the LRB and I can carry out this request.

Peggy

From: Seligman, Noah
Sent: Wednesday, April 20, 2011 5:01 PM
To: Hurley, Peggy
Subject: New Draft of LRB 0079/P1

<< File: 2011 LRB 0079-1 Gender Violence Act.pdf >>

Attached is a draft of LRB 0079/1. I would like it modified per our conversation yesterday to add "gender" under 939.645 of the state statutes related to different hate crimes.

Please let me know if you have questions.

Thanks.

Noah Seligman
Legislative Assistant
Office of State Rep. Terese Berceau
608-266-3784



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0079/1
PJH:jld:md

rmr

2011 BILL

4.29.11

✓
[Insert 2] ✓
1
2
3

Regen

AN ACT *to amend* 814.04 (intro.); and *to create* 893.583 and 895.437 of the statutes; **relating to:** creating a civil cause of action for acts of violence motivated by gender. [Insert 1] ✓

of the

Analysis by the Legislative Reference Bureau

^{also}
This bill creates a civil cause of action for a person who suffers physical, emotional, or economic harm as a result of a gender-based act. Under the bill, a gender-based act is a physical act of violence that is committed, at least in part, on the basis of the victim's gender or sexual intercourse or contact that the actor commits under coercive conditions. Under the bill, if the actor has previously committed either of these acts against the victim, a threat to commit either of those acts is also a gender-based act.

Under the bill, a victim must commence a civil action against the actor within seven years after the gender-based act occurs or, if the victim is under the age of 18, within seven years after the victim's 18th birthday. A victim who prevails in a civil action for a gender-based act may recover damages for emotional distress, punitive damages, and investigation or litigation costs, including attorney fees. The bill specifies that a cause of action exists only against the individual who committed the gender-based act.

✓
[Insert 3]

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

, as affected by
2011 Wisconsin
Act 2,

BILL

1 SECTION 1. 814.04 (intro.) of the statutes^X is amended to read:

2 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)

3 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)

4 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), ^{895.044, ← plain} ~~895.437 (4)~~, 895.443 (3),

5 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51

6 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

7 **SECTION 2.** 893.583^X of the statutes is created to read:

8 **893.583 Gender-based harm.** Notwithstanding ss. 893.16, 893.54, and

9 893.57, an action under s. 895.437 shall be commenced within 7 years after the cause

10 of action accrues or, if the victim is under the age of 18 at the time the cause of action

11 accrues, within 7 years of the victim's 18th birthday, or be barred.

12 **SECTION 3.** 895.437^X of the statutes is created to read:

13 **895.437 Gender-based harm; action for.** (1) In this section:

14 (a) "Gender-based act" means any of the following:

15 1. A physical act of violence that satisfies the elements of s. 940.19 (1) that an
16 individual commits against the victim, at least in part, on the basis of the victim's
17 gender.

18 2. Sexual contact as defined in s. 940.225 (5) (b) or sexual intercourse as defined
19 in s. 940.225 (5) (c) that an individual commits under coercive conditions or without
20 consent as defined in s. 940.225 (4).

21 3. If an individual has previously committed a physical act of violence that
22 satisfies the elements of s. 940.19 (1) against the victim or an act described in subd.
23 2., a threat to commit an act described in subd. 1. or 2.

24 (b) "Victim" means a person against whom a gender-based act has been
25 committed.

BILL

1 (2) A victim has a cause of action for injunctive relief and for damages, as
2 provided in sub. (4), against the individual who commits a gender-based act that
3 results in a physical injury, emotional distress, or damage to or loss of property to the
4 victim.

5 (3) The burden of proof in a civil action under sub. (2) rests with the victim to
6 prove that the defendant committed a gender-based act and that the victim suffered
7 harm as a result of the act by a preponderance of the credible evidence.

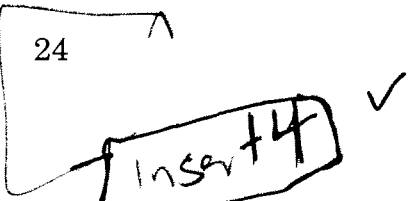
8 (4) If the plaintiff prevails in a civil action under sub. (2), he or she may recover
9 special and general damages, including damages for emotional distress; punitive
10 damages; and costs, including all reasonable attorney fees and other costs of the
11 investigation and litigation that were reasonably incurred.

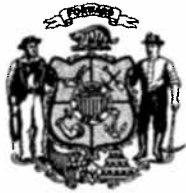
12 (5) A person may bring a civil action under sub. (2) regardless of whether there
13 has been a criminal action related to the gender-based act and regardless of the
14 outcome of any such criminal action. If there is a final judgment or decree rendered
15 in favor of the state in any criminal proceeding against the defendant, a defendant
16 may not deny the essential allegations of the criminal offense in any action under this
17 section.

18 (6) A gender-based act under this section shall be deemed for all purposes to
19 be an intentional act.

20 (7) This section does not limit the right of a person to recover from any parent
21 or parents under s. 895.035.

22 (8) This section does not create a cause of action against any person except the
23 individual who commits a gender-based act.

A handwritten box containing the text "Insert 4" with a checkmark next to it.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3598/1
CMH:bjk:ph

2009 SENATE BILL 344

October 12, 2009 - Introduced by Senators TAYLOR and VINEHOUT, cosponsored by Representatives PARISI, PASCH, ROYS, BLACK, BERCEAU, TURNER, SHILLING, DEXTER, GRIGSBY and SMITH. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

Insert 1

- 1 **AN ACT to amend** 939.645 (1) (b) and 939.645 (4) of the statutes; **relating to:**
2 making crimes based on gender of victim subject to a penalty enhancer, and
3 providing a penalty.

Insert 2

Analysis by the Legislative Reference Bureau

Current law provides an enhanced penalty for certain crimes if the person committing the crime intentionally selects the victim based on his or her belief or perception of the victim's race, religion, color, disability, sexual orientation, national origin, or ancestry. This bill provides an enhanced penalty for certain crimes if the person committing the crime intentionally selects the victim based on his or her belief or perception of the victim's gender. The penalty enhancer revises the maximum fine and the maximum term of imprisonment for the crime, and the revision is based on the classification of the underlying crime. If the underlying crime is a Class B or Class C misdemeanor, the revised maximum fine is \$10,000 and the revised maximum term of imprisonment is one year in the county jail. If the underlying crime is a Class A misdemeanor, the penalty enhancer changes the status of the crime to a felony and the revised maximum fine is \$10,000 and the revised maximum term of imprisonment is two years. If the underlying crime is a felony, the maximum fine may be increased by not more than \$5,000 and the maximum term of imprisonment may be increased by not more than five years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

Insert 3

SENATE BILL 344

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill. (end insert 3)

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 939.645 (1) (b) of the statutes is amended to read:

939.645 (1) (b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par. (a) in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, gender, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception was correct.

SECTION 2. 939.645 (4) of the statutes is amended to read:

939.645 (4) This section does not apply to any crime if proof of race, religion, color, disability, gender, sexual orientation, national origin or ancestry or proof of any person's perception or belief regarding another's race, religion, color, disability, gender, sexual orientation, national origin or ancestry is required for a conviction for that crime.

SECTION 3. Initial applicability.

(1) This act first applies to acts committed on the effective date of this subsection.

(end insert 4)

(END)